

**REMARKS**

Reconsideration of the instant application is respectfully requested. The present submission is responsive to the Office Action of February 2, 2005, in which claims 1-15 are presently pending. Following the Applicants' amendment filed September 6, 2005, claims 1-15 are now rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,884,630 to Gupta, et al. in combination with 6,815,784 to Parks. For the following reasons, however, it is respectfully submitted that the application is now in condition for allowance.

In support of the present rejections, the Examiner has taken the position that the process sequence embodiment of Figures 10-18 in Gupta teaches a hardmask (7) formed over a magnetic stack layer (20, 30, 70) that forms a self aligning contact between the hardmask (7) and an upper metallization level (80). However, a review of Figures 17 and 18 of Gupta (as well as col. 6, lines 27-33) reveals that the hardmask (7) is etched down to the top magnetic layer 70 so as to form a via 82 in which the upper metal layer 80 is deposited (Fig. 18). In other words, the top metal layer 80 is in direct contact with the top magnetic layer 70. Therefore, because all portions of the hardmask (7) directly upon the top magnetic layer 70 are removed before formation of the upper metal layer 80, the hardmask (7) does not serve as a self aligning contact between a magnetic stack layer and an upper metallization level, as is recited in the claims.

In view of this, the Applicants respectfully traverse each of the outstanding §102 rejections based on the art of record. None of the cited references teach or suggest a hardmask layer that forms a self aligning contact between a magnetic stack layer and an upper metallization level formed above MTJ stacks, as is provided for in each of the pending claims. Furthermore, although the Applicants have pointed out that the Gupta reference (under §102(c)) does not anticipate the pending claims, this is not to be construed as an admission on the part of the Applicants that Gupta is prior art with

respect to the invention of the instant application. The Applicants reserve the right to submit an affidavit to antedate Gupta under 37 CFR 1.131.

For the above stated reasons, it is respectfully submitted that the present application is now in condition for allowance. No new matter has been entered and no additional fees are believed to be required. However, if any fees are due with respect to this Amendment, please charge them to Deposit Account No. 09-0458 maintained by Applicant's attorneys.

Respectfully submitted,  
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